

Hon. Robert Brutinel, Chair  
Committee on the Impact of Wireless Mobile Technologies  
and Social Media on Court Proceedings  
1501 W. Washington St., Suite 410  
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO ADOPT RULE 122.1,	)	
RULES OF THE SUPREME COURT	)	Supreme Court No. R-13-____
	)	
	)	(Modified comment period
	)	requested)
	)	
_____	)	

Petitioner respectfully petitions this Court to adopt Rule 122.1 of the Rules of the Supreme Court. This rule concerns the use of portable electronic devices by visitors to the courthouse. The proposed text of this new rule is in the Appendix.

**I. Background.** Petitioner is the Chair of the Committee on the Impact of Wireless Mobile Technologies and Social Media on Court Proceedings (the “Wireless Committee”), which was established by Administrative Order 2012-22. The Wireless Committee presented its report and recommendations to the Arizona Judicial Council (“AJC”) on December 13, 2012; the AJC approved the Wireless Committee’s request to file a petition proposing adoption of this new rule. The

proposed number is Rule 122.1 because this rule is a companion to Supreme Court Rule 122, which is the subject of a concurrent rule petition filed by the Wireless Committee.

Administrative Order 2012-22 recognized the “unprecedented growth” in the number of hand-held smart devices, laptops, and tablets. The Order described how these mobile and wireless devices “may be accessed nearly anywhere and anytime for email, phone and video calls, text messages, internet browsing, taking pictures and videos, research, blogging, and posting to social media sites.” The Order also noted how increasing accessibility to these devices poses new security challenges for the courts. The Order established the Wireless Committee to address issues arising from use of this advanced technology during court proceedings.

The Wireless Committee’s proposed amendments to Rule 122 address the use of recording devices in the courtroom. The definition of “recording device” in the proposed amendments to Rule 122 includes any apparatus used to capture and store the sound or the images, or both, of a court proceeding, and from which a person can retrieve or broadcast sound or images. The definition specifically mentions cameras, smart phones, and audio recorders. The proposed amendments to Rule 122 require a person who wishes to use a recording device to submit a written request to the court; the proposed rule provides exceptions for celebratory or ceremonial court proceedings, or for the use of a “personal audio recorder.”

Rule 122 is restricted to the courtroom. It does not encompass recording in other areas of the courthouse, nor is it broad enough to cover the use of wireless mobile technology in the courtroom for a function other than recording, such as text messaging or internet access. The Wireless Committee drafted proposed Rule 122.1 to address these other areas of concern.

The Wireless Committee made an early decision that it would not recommend a rule that required court visitors to surrender their portable electronic devices upon entry into the courthouse, or upon entry into a courtroom. Requiring surrender of devices at courthouse security would create a logistical nightmare, and even disallowing use of devices in the courtroom for texting or internet browsing would be a challenge to enforce. Instead, the Wireless Committee considered where in the courthouse, and by whom, when, and how, court visitors should be allowed to use the devices. The Wireless Committee incorporated its conclusions in proposed Rule 122.1, entitled “Use of portable electronic devices.”

**II. Content of the proposed rule.** Proposed Supreme Court Rule 122.1 consists of six sections.

Purpose and definition: Section (a) sets out the purpose of this rule, which is to describe permissible uses of portable electronic devices by visitors to the courthouse. Section (b) defines three terms: “portable electronic device,” “courthouse,” and “courtroom.”

Photography and recording: Section (c) prohibits use of a portable electronic device for photography and recording in a “courtroom,” except when authorized by a judge or as otherwise allowed under Rule 122. An early draft of Rule 122.1 had expanded this prohibition to the entire “courthouse.” However, some Arizona courthouses are historic and invite photography, and it could be counterproductive if the rule required a judge to approve every visitor’s request to take a photograph of something of architectural or historical interest. The proposed rule states that a local court, by an administrative order, may prohibit or limit use of recording devices in other areas of the courthouse, such as at a filing counter.

During the vetting process for this rule, the Wireless Committee heard concerns about an earlier version of section (c). Although it was not the intention of the Wireless Committee, the former version would have allowed parties or members of the public to take photos of judges, court personnel, prosecutors, and victims outside the courtroom. The Wireless Committee added language to section (c) that prohibits anyone from “knowingly” taking photographs or making recordings of another person anywhere in the courthouse without that person’s consent, except as allowed under Rule 122. Section (c) also provides that a violation of this section “presumptively obstructs the administration of justice and lessens the dignity of the court” to clarify that a violation is punishable by the

contempt provisions of Arizona Rule of Criminal Procedure 33.1. Section (c) requires that the court use reasonable means to advise the public of the prohibitions of this section.

Jurors and witnesses: Section (d), concerns the use of a portable electronic device in the courtroom by a juror or by a witness. The rule provides that a juror may not use a portable electronic device while in the courtroom, or while in a jury room during deliberations. Because a juror may not use a portable electronic device during deliberations, this section requires the court to provide jurors with a court telephone number at which an emergency message may be left for a juror. A witness may use a portable electronic device in a courtroom while testifying only with permission of a judge, for example, pursuant to Rule 612 of the Arizona Rules of Evidence.

Attorneys, parties, and members of the public: Section (e) applies to the use of devices by attorneys, parties, and members of the public while in the courtroom. This was a challenging section of the proposed rule because on the one hand, attorneys, parties, and members of the public can use devices in a courtroom productively, and without distracting others. On the other hand, some judges, especially in courts where there are fewer attorneys and larger volumes of individuals in their courtrooms, believe that allowing use of devices undermines their control of the courtroom and poses potential security risks. These judges

believe the rule should allow them to require that everyone turn their devices off when they enter the courtroom. Some courts in Arizona already have policies that require everyone, or everyone other than attorneys, to turn off their portable devices when entering a courthouse or courtroom.

The compromise provision of proposed section (e) is that any person, other than a juror or a witness, may use a device in a courtroom to retrieve and store information, to access the internet, and to send or receive messages or information. However, because public use of electronic devices in a high volume courtroom may be a hindrance to a judge's effective management of a calendar, or a particular courtroom's acoustics may easily transmit the sound of keystrokes, or for other valid reasons, section (e) also provides that a judge may prohibit use. Because audible sounds create distractions, section (e) also states that a person may not use a device to make or to receive telephone calls, or for other audible functions, while court is in session, without the court's express permission.

Outside the courtroom: Section (f) permits anyone to use a portable electronic device within a courthouse, and outside a courtroom, except as provided by sections (c), (d), and (e). The proposed rule provides that any use of a device within the courthouse is subject to the authority of judges, court administrators, or court security officers to limit or to terminate activity that may be disruptive to court operations, or that may compromise courthouse security.

Certain provisions of Rule 122.1, such as not allowing phone calls in a courtroom, or not permitting jurors to have internet access during deliberations, might seem so fundamental and obvious as to not require a rule. However, Rule 122.1 serves to codify these fundamental concepts, and provides a Supreme Court rule as authority for a trial court's enforcement of these prohibitions.

**III. Comments.** Petitioner solicited comments on prior drafts of this rule from a variety of stakeholders, including the Committee on Limited Jurisdiction Courts, the Committee on Superior Court, and the Limited Jurisdiction Court Administrators Association, as well as during a quarterly conference of the Presiding Judges. During the drafting process, Petitioner also received informal comments from judges statewide.

**IV. Conclusion and Request for Modified Comment Period.** Petitioner requests the adoption of new Rule 122.1. Petitioner recognizes the statewide importance of this rule, and anticipates public comments that might result in improvements to Petitioner's proposed version. Petitioner accordingly requests a "*staggered*" comment period. The Wireless Committee would like to reconvene after the initial comment period and address issues raised by those comments, and file an amended rule petition thereafter, if appropriate. The Wireless Committee has made a similar request in its petition to amend Supreme Court Rule 122.

Petitioner therefore requests a modification to the usual rule petition schedule with an Order setting the following deadlines:

- March 15:       Comments to this initial petition are due
- April 19:       The Wireless Committee may file an amended petition
- May 24:        Comments to an amended petition are due
- June 28:       The Wireless Committee may file a reply to comments to its amended petition

This proposed schedule will allow the Court to act upon the matters presented by this petition in September 2013, as provided by Supreme Court Rule 28(f).

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of January 2013

By \_\_\_\_\_  
Hon. Robert Brutinel, Chair  
Committee on the Impact of Wireless Mobile  
Technologies and Social Media on Court  
Proceedings  
1501 W. Washington Street  
Phoenix, AZ 85007



## Appendix

### Rule 122.1: Use of a portable electronic device [New]

**a. Purpose.** This rule describes permissible uses of portable electronic devices in a courthouse and in a courtroom by attorneys, parties, witnesses, jurors, and members of the public.

**b. Definitions.** The following definitions apply in this rule:

1. A “*portable electronic device*” is a mobile device capable of electronically storing, accessing, or transmitting information. The term encompasses among other things, a transportable computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone, or other wireless phone; a camera and other audio or video recording devices; a personal digital assistant (PDA); other devices that provide internet access; and any similar items.
2. A “*courthouse*” includes all areas within the exterior walls of a court building, or if the court does not occupy the entire building, that portion of the building used for the administration and operation of the court.
3. A “*courtroom*” is an area of a courthouse or other building where a judge or other judicial officer conducts judicial proceedings.

**c. Photography and audio or video recording.** No one may use a portable electronic device for photographs or for audio or video recording in a courtroom, unless that use was approved by the judge conducting a proceeding in that courtroom, or is otherwise allowed under Rule 122. By local administrative order, a court may prohibit or limit photography or recording in other areas of a courthouse. A party or a member of the public may not knowingly photograph or record another person anywhere in the courthouse without the person’s consent. A violation of this section presumptively obstructs the administration of justice, and lessens the dignity and authority of the court. A court must use reasonable means to advise the public and court participants of prohibitions under this section.

**d. Jurors and witnesses.** A juror may not use a portable electronic device while present in a courtroom during a trial, or in a jury room during the jury’s deliberations and discussions concerning a case, and jurors must turn off their portable electronic devices while in those locations at those times. When a jury is

deliberating, the court must provide jurors with a court telephone number at which an emergency message may be left for a juror. While in a courtroom, a witness must silence any portable electronic device, and may use a device while testifying only with permission of a judge.

**e. Attorneys, parties, and members of the public.** Any person, other than a juror or a witness, may use a portable electronic device in a courtroom to retrieve or to store information, to access the internet, and to send and receive text messages or information. A portable electronic device may not be used, without permission of the court, to make or to receive telephone calls or for other audible functions while court is in session, and attorneys, parties, and members of the public must silence portable electronic devices while in the courtroom. Any allowed use of a portable electronic device is subject to the authority of a judge to prohibit activity that may be disruptive or distracting to a court proceeding, or that may otherwise be contrary to the administration of justice.

**f. Use of a portable electronic device outside a courtroom.** Except as provided in sections (c), (d) and (e), any person may use a portable electronic device within a courthouse and outside of a courtroom, subject to the authority of judges, court administrators, or court security officers to limit or terminate activity that may be disruptive to court operations or that may compromise courthouse security.